

Additionally, this matter is before the Court *sua sponte* with respect to the status of Plaintiff's case. It appears that Plaintiff has not yet filed its Amended Complaint, other than as an attachment to its Motion to Amend. The Order allowing the Motion to Amend, filed February 28, 2005, is silent

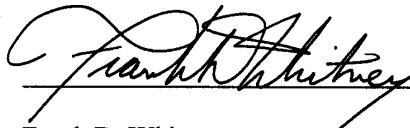
as to whether this Court deemed the Amended Complaint to be filed with the Motion or whether the Court intended for Plaintiff to file the Amended Complaint upon receipt of the Order. Plaintiff is instructed to electronically file its Amended Complaint with this Court within fourteen (14) days from the date this Order is entered. Defendant shall file his response in accordance with the Federal Rules of Civil Procedure. Since the Motion to Dismiss is denied without prejudice, Defendant may renew the motion to dismiss consistent with the Federal Rules of Civil Procedure. If Defendant willfully fails to answer the Amended Complaint or otherwise respond, Plaintiff should timely file an appropriate motion for entry of default and for default judgment.

ORDER

IT IS, THEREFORE, ORDERED that Defendant Ross Herring's March 22, 2004, Motion to Dismiss is **DENIED** without prejudice as **MOOT**.

COUNSEL FOR PLAINTIFF is, respectfully, directed to file its Amended Complaint within 14 days of the filing of this ORDER, and that filing shall trigger the applicable time limits to respond and for filing a motion to dismiss, if Defendant chooses to file such a motion.

Signed: August 4, 2006


Frank D. Whitney
United States District Judge

